Stecker, 271 F. Supp. 406 (1965) Cert. denied 88 S.CT. 290, 389 U.S. 929, 19 L. Ed, 2d 280.

Lisenba vs. People of State of California, 314 U.S. 219, 236, 62 S.Ct. 280, 86 L.Ed. 166 (1941).

U.S. vs. Tomaiolo, 249 F. 2d 683 (1957).

Burwell vs. Teets, 245 F. 2d 154 (1957). Cert. denied 78 S.Ct. 271, 355 U.S. 896, 2 L.Ed. 2d 194.

Mooney vs. Holohan, 294 U.S. 103, 55 S.Ct. 340, 79 L.Ed. 791 (1935).

(c) (1) Whether certain questions asked by the prosecuting attorney of witnesses who were investigating authorities for the State insinuated that the Defendant had prior convictions of similar crimes, and so influenced the jury as to deny the

Defendant his right to a fair and impartial trial as guaranteed by the Sixth Amendment to the Constitution of the United States, and constituted a denial of fundamental fairness shocking to the universal sense of justice.

(2) Whether certain responses made by the State's witnesses to the prosecuting attorney's questions so insinuated that the Defendant had been guilty of other crimes and so influenced the jury as to deny the Defendant his right to a fair and impartial trial as guaranteed by the Sixth Amendment to the Constitution of the United States, and whether the conviction was attended by fundamental unfairness.

(d) The Appellant, Roy Welch, was indicted and tried at the regular June, 1969, term

of Circuit Court of Lowndes County, Mississippi, on the charge of burglary. The evidence shows that on September 13, 1968, Lowndes County Co-Op was burglarized and as a result about $300.00 was stolen from an iron safe. The Appellant was found guilty and sentenced to a term of six (6) years in the State Penitentiary. During the presentation of the State's case, the prosecuting attorney elicited from certain witnesses for the State responses to questions that would insinuate to the jury that the Defendant had been guilty of a prior similar conviction. (R.-22)

BY MR. BUCK:

Q. Would you state your name, please sir?

A. F. H. Easterwood.

Q. Mr. Easterwood, where are you employed?

A. State of Alabama A.B.C. Board.

Q. Directing your attention back to around September 13, 1965, where were you employed at that time?

A. I was Deputy Sheriff in Cullman, Alabama.

Q. And were you officially acting in the capacity of Deputy Sheriff at that time?

A. Yes, sir.

Q. Mr. Easterwood, I will ask you if you if you know or have seen the Defendant, Roy Welch, here before?

A. Yes, sir.

Q. Would you teld us where?

A. Cullman County.

Q. Mr. Easterwood, on that occasion about when was that did you say?

A. The date when I saw him?

Q. Yes, sir.

A. It was on the night of September 17, 1965.

Q. And on that occasion did you take any property from the Defendant at that time?

A. Yes, sir.

Q. I hand you a black satchel bag and ask you if you can identify that bag?

A. Yes, sir.

Q. And where did you obtain that bag?

A. Holly Pond.

Q. That is in Alabama?

A. Cullman County in Alabama.

Q. From the presence of the Defendant?

A. Yes, sir.

Q. Was there one other person with him?

A. Yes, sir.

Q. Jesse Cummings?

A. Yes, sir.

Q. And you obtained that bag from them on that occasion?

A. In their presence, yes, sir.

Q. I would like to introduce this as Exhibit I to the testimony of this witness.

BY THE COURT: Let it so be received and marked

(The black bag was marked Exhibit I to the testimony of Mr. Easterwood on direct examination.)

BY MR. BUCK:

Q. Mr. Easterwood, I also hand you a pair of lock grip pliers and ask you to examine those and tell the Court and jury where you obtained those?

A. Holly Pond, Alabama, Cullman County.

Q. Were they obtained from the presence of this Defendant?

A. Yes, sir.

Q. Roy Welch?

A. Yes, sir.

BY MR. BUCK: I would like to introduce these lock pliers as Exhibit II to the testimony of this witness.

BY THE COURT: Let it so be received and marked.

(The lock grip pliers were marked Exhibit II to the testimony of Mr. Easterwood on direct examination.)

BY MR. BUCK:

Q. Now, Mr. Easterwood, after taking these from the presence or from the person of the Defendant, what, if anything, did you do with them?

A. With the tools?

Q. Right.

A. They were locked in the vault in the Sheriff's office in Cullman, I will look at my note, on the 9th/19th of '65 they were turned over to Louis W. Harper, Chief of Detectives of Columbus, Mississippi.

Q. That was the Chief of Detectives from Columbus, Mississippi?

A. Yes, sir.

Q. And they were kept under lock and key until they were turned over to Mr. Louis Harper?

A. Yes, sir.

CROSS-EXAMINATION.

BY MR. CARTER:

Q. What are you testifying to, MR. Easterwood, you are stating that this bag here was taken from the presence of this defendant?

A. Yes, sir.

Q. You don't mean to imply to the jury that this bag belonged to him, do you?

A. I don't know who it belonged to. It was in his presence.

Q. In his presence?

A. Yes, sir.

Q. And so were the clippers here? They were in his presence too?

A. Yes, sir.

Q. That's all.

RE-DIRECT EXAMINATION

BY MR. BUCK:

Q. Mr. Easterwood, not stating what they were doing, but did you observe this Defendant along with Mr. Cummings using the tools from this bag on that occasion? (emphasis ours)

A. Yes, sir.

BY MR. CARTER: If the Court please, we are going to - - -

BY THE COURT: The jury will retire to the jury room.

Upon this statement by the prosecuting attorney, the defense moved for a mistrial which was denied by the trial court. Additionally, the state's witness, Mr. Louis Harper, on page 40 of the Record is quoted as follows:

BY MR. BUCK:

Q. Mr. Harper, did you have occasion to

see Mr. Welch on or about September the 13th or 14th in Lowndes County, Mississippi,

A. I did.

(Continuing to page 41 top)

Q. What was the date, time and place that you saw him?

A. It was on Monday, September the 13th, 1965, after processing the crime scene at the Lowndes County Co-Op. Detective Walters and myself were in a patrol car and it was somewhere around dark or right after dark we passed the S-Curve Cafe located on Old Pickensville Road right at the city limits of Columbus. As we passed I recognized a subject there that was a known safe burglar, Jesse Cummings, so we turned around and came back - - -

(sic) (emphasis ours)

BY MR. CARTER: If the Court please, we ask the jury be retired.

BY THE COURT: The jury will retire to the jury room.

(At this time the Court heard Mr. Carter's Motion for Mistrial. The Motion was overruled.)

Appellant's Motion for a Mistrial was again denied.

The failure of the Court to grant a mistrial for either or both of the above was assigned as errors in the Appeal of this to the Supreme Court of the State of Mississippi. On March 30, 1970, the decision of the lower court was affirmed, and on April 13, 1970, Appellant's motion for a rehearing was denied, from which this Appeal to the United States Supreme Court is taken.

(e) Appellant would show that the Federal questions upon which this appeal is based are substantial. The Supreme Court of the United States has repeatedly held that

actions of a prosecuting attorney in a State Court which tend to abridge the rights of any citizen of the United States to a fair and impartial trial as guaranteed by the Sixth Amendment to the Constitution present a Federal question which allows judicial recourse to the highest court of the land.

In the case at bar, the prosecuting attorney in the presence of the jury elicited from the State's witnesses numerous responses to questions that would cause reasonable men to believe that the defendant had been convicted of previous similar crimes and to which a timely objection was made by the Appellant's counsel. The case of U.S. vs. Guglielmini, 384 F. 2d 602 (1967) clearly indicates that this is an abridgment of the Appellant's Sixth Amendment rights. The case of Mooney

vs. Holohan, 294 U. S. 103, 55 S.Ct. 340, 79 L. Ed. 791 (1935) stands for the proposition that if the prosecuting attorney in a State Court is guilty of conduct which tends to deny the Appellant his right to a fair and impartial trial, a question for Federal determination is tendered. On the basis of these and other cases cited previously, it is contended that the Federal questions presented are substantial and require plenary consideration by this Court.

(f) No opinion rendered by Mississippi Supreme Court. Trial Court affirmed per curiam.

(g) Judgment appealed from appended hereto as Exhibit "A".

William E. O'Hare
Attorney for Appellant
P. O. Box 640
Cleveland, Mississippi

IN THE SUPREME COURT OF MISSISSIPPI

MONDAY, MARCH 30, 1970, Court Sitting : : : : : : : : : : : : :

Roy Welch

45,775 vs.

State

This cause having been submitted at a former day of this Term on the record herin from the Circuit Court of Lowndes County and this Court having sufficiently examined and considered the same and being of the opinion that there is no error therein doth order and adjudge that the judgment of said Circuit Court rendered in this cause on the 23rd day of June 1969-a conviction of burglary and larceny and a sentence of six years on the State Penitentiary-be and the same is hereby affirmed. It is further ordered and adjudged that the State of Mississippi do have and recover of and from the appellant and Louis Garrett and Johnny Allegrezza, sureties on the appeal bond herein, all of the costs of this appeal to be taxed.

MINUTE BOOK "BN" PAGE 94

Exhibit A

ATTEST

A True Copy

This the 16th day of June 1970

JULIA H. KENDRICK, CLERK

SUPREME COURT OF MISSISSIPPI

By Faye Harvey